

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

Cr. Appeal No.S-51 of 2017.

Abdul Karim Memon                      Versus                      The State

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Cr. Rev. A. No.S-66 of 2017.

Masroor Ahmed                      Versus                      Abdul Kareem Memon & another

Appellant/Respondent  
Abdul Kareem Memon  
(present on bail in Cr.  
Appeal No.S-51/2017)

:

Through Mr. Ayaz Kareem Memon,  
Advocate

Applicant/complainant  
Masroor Ahmed

:

Through Mr. Shahnawaz Brohi,  
Advocate

Respondent the State

:

Through Mr. Shahid Ahmed Shaikh,  
D.P.G. alongwith SIP Ghulam  
Mustafa Laghari, Ex-SHO P.S.  
Baldia, Hyderabad.

Date of hearing & judgment

:

24.01.2019.

**J U D G M E N T**

**Zulfiqar Ahmad Khan, J:** As both the aforementioned Cr. Appeal, as well as, Cr. Revision have arisen out of one and same judgment and the question of law and facts on record are also the same, therefore, I intend to decide both the captioned matters together through this common judgment.

2. Through Criminal Appeal No.S-51/2017, appellant Abdul Kareem Memon has impugned the judgment dated 06.03.2017, passed in ID complaint No.03/2015, filed by complainant Masroor Ahmed u/s 3&4 of Illegal Dispossession Act, 2005, where appellant was convicted under section 265-H(ii) Cr.P.C. and sentenced to suffer R.I. for 03 years with direction to pay compensation to the complainant at the rate of Rs.10,000/- and in case of non-payment of said compensation, he was ordered to further undergo one month simple imprisonment (Point No.2 of impugned judgment).

3. Through Criminal Revision Application, filed u/s 439 Cr.P.C, applicant Masoor Ahmed has impugned the aforementioned judgment dated 06.03.2017 and prayed for enhancement of the sentence awarded to respondent No.1 Abdul Kareem Memon, as provided under section 3 of Illegal Dispossession Act, 2005.

4. Precisely, applicant/complainant filed I.D. complaint under section 3 & 4 of Illegal Dispossession Act, 2005 against the appellant/respondent stating therein that he is owner of plot bearing No.452, admeasuring 2000 Sq. Yds. In C.S. No.2971, Ghulam Shah Kalhoro Colony, Hyderabad, which he had acquired through registered lease deed dated 31.10.2011, which entry is available in the record of right and mutation also made in his favour. Thereafter, he was put in possession of the above said plot where he constructed one room, deputed watchmen, got sanctioned/installed electric meter, and was paying electricity bills regularly. It was alleged that on 20.12.2014 at about 06:00 p.m. accused persons without any right or lawful authority, with intention to dispossess the complainant, forcibly and illegally entered upon the complainant's said plot and illegally occupied the same and dispossessed the complainant.

5. While proceeding with the said I.D complaint, the learned trial Court framed the point for determination as to "*Whether accused each 1) Abdul Kareem Memon, 2) Nafees Kareem Memon and 3) Mazhar Hussain Memon, without any title, right or lawful authority, with intention to dispossess, on 20.12.2014 at 06:00 pm forcibly entered upon the plot of complainant bearing No.452 admeasuring about 2000 square yards out of C.S. No.2971, situated at Ghulam Shah Kalhoro Colony, Hyderabad, and illegally occupied it by dispossessing complainant, as alleged*".

6. In order to show his legal character in the property in question, the complainant exhibited a registered lease deed as well as extract from City Survey record. The said lease deed is available on page-27 of the paper book, which is issued by Katchi Abadi Authorities on 31.10.2011 in respect of the said plot.

7. On the other hand, accused persons claimed their right to the property through a series of judgments and decrees earliest of 29.07.1997 where the said survey number alongwith other survey numbers were declared to be owned by the plaintiff Meer Muhammad in F.C. Suit No.58/1984. The accused persons claim that they had purchased the said property from Mir Muhammad through an agreement of sale, whose specific performance was sought through F.C. Suit No.312/2012.

8. A review of the ownership documents of the rival parties shows that while complainant is claiming his title arising out of the registered lease deed granted by the Katchi Abadi Authorities, the rivals are claiming their right through a series of judgments and decrees emanating from 1997 judgment. In the said judgment in issue No.5, the Court in clear terms observed that while survey number claimed in the said suit including the subject city survey numbers 2971 were Municipal and Public Properties but the trial Court on its own motion, permitted the parties residing thereon to continue their possession.

9. The trial Court in the impugned judgment in my humble view, has failed to consider these facts and did not go into deeper appreciation that if the claim of the plaintiff was to be admitted in the subject property on the basis of a lease deed from Katchi Abadi Authorities, such claim was not sustainable since there was no notification under section 19 of the Katchi Abadi Act, 1987, which requires each Katchi Abadi to be declared as such through official notification. The Court did not call for such Notification before passing impugned judgment because no legal effect could have been given to the lease deed issued in the name of the complainant by Katchi Abadi Authority without first having declared the entire locality as a Katchi Abadi, and on the other hand, the rival claim of the respondent as emanating from series of judgments and decrees was shrouded with doubts as the survey number 2971 was a Municipal and public property. These aspects were not fully considered by the trial Court in the instant matter, which in a slipshod manner without looking into the depth of property documents, passed the impugned judgment

which while acquitting two accused, however, convicted appellant Abdul Kareem Memon alone.

10. There appears to be a case of civil nature between the parties and in my view, the record shows that the subject property in fact is a Municipal land and both parties are falsely claiming their right to such public land. The Honourable Supreme Court time and again has issued directions that all public lands should be removed from encroachments and should be used only for public purposes.

11. In these circumstances, Criminal Appeal No.S-51/2017 is allowed, the impugned judgment dated 06.03.2017, passed by learned Vth Additional Sessions Judge, Hyderabad in I.D Complaint No.03/2015, is set aside and the appellant is acquitted of the charge. He is present on bail, his bail bond is cancelled and surety stands discharged; as a result, the Criminal Revision Application No.S-66/2017 is dismissed. However, if there is any dispute between the rival parties, the same should be decided by approaching the Court of competent civil jurisdiction.

12. Since the property in question is a Municipal and public land, the possession thereof should be retained by the Hyderabad Municipal Corporation, which after taking possession thereof, shall submit a compliance report through Additional Registrar of this Court within a period of fifteen (15) days and ensure that all encroachments on the said land are removed and the land only to be used for public purpose.

JUDGE

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